IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA,
Appellant

vs.

JAMES WALTER DEGRAFFENREID III, DURWARD JAMES HINDLE III, JESSE REED LAW, MICHAEL JAMES MCDONALD, SHAWN MICHAEL MEEHAN, AND EILEEN A. RICE,
Respondents.

Electronically Filed
Oct 28 2024 04:49 PM
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO.: 89064
Dist. Ct. No.: C-23-379122-1; C-23-379122-2; C-23-379122-3; C-23-379122-4; C-23-379122-5; C-23-379122-6

RESPONDENTS' MOTION TO DISMISS APPEAL

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I. INTRODUCTION

The State argues on appeal that venue lies in Clark County because Defendants mailed documents containing false statements to the U.S. District Court for the District of Nevada in Las Vegas. However, Nevada courts lack subject matter jurisdiction over such conduct under the Supremacy Clause of the United States Constitution. U.S. Const. art. VI, cl. 2. First, the criminal charges against Defendants must be dismissed to the extent they rely on allegations regarding the submission of documents containing purported false statements to the U.S. District Court of Nevada and the contention that then-Chief Judge Miranda Du was the victim of the alleged crimes. Second, the State claims it is enforcing election laws against the Defendants, who were the GOP Electors. But Nevada has no authority over such crimes as its role regulating federal electors is very limited.

This Court must dismiss the State's appeal for lack of jurisdiction.

II. LEGAL ARGUMENT

A. Legal Standards.

"The government of the United States, within the scope of its powers, is supreme, and cannot be interfered with or impeded in their exercise." *City of Detroit v. The Murray Corp.*, 355 U.S. 489, 497 (1958); *cf. Martin v. Martin*, 138 Nev. Adv. Rep. 78, 520 P.3d 813, 818 (Nev. 2022) ("The Supremacy Clause of the United States Constitution provides that federal law is the supreme law of the land.")

In the criminal context, the language of preemption is not necessarily used but the underlying principle is that the Supremacy Clause divests states from targeting conduct that is inseparably tied to the functioning of the federal government. *See U.S. ex rel. Noia v. Fay*, 300 F.2d 345, 354-55 (2d Cir. 1962), *aff'd sub nom. Fay v. Noia*, 372 U.S. 391 (1963) (noting Supreme Court has barred State prosecutions where the State court had "no jurisdiction to entertain an action so inseparably connected with the functioning of the National Government"); *see also In re Waite*, 81 F. 359, 372 (N.D. Iowa 1897) *aff'd sub nom. Campbell v. Waite*, 88 F. 102 (8th Cir.1898). (state criminal laws inapplicable to a pension examiner appointed under the laws of the United States for acts done in connection with his duties as examiner); *State of Ohio v. Thomas*, 173 U.S. 276, 283 (1899) (state lacked authority to apply its criminal laws to director of a national soldiers' home in Ohio because he was acting on federal authority and "[u]nder such circumstances the police power of the state has no application."); *cf. In re Neagle*, 135 U.S. 1, 76 (1890) (federal officer responsible for protecting federal judge who committed homicide in the line of duty not liable to answer in courts of California for murder charges because he was acting under authority of the law of the United States).

The federal preemption doctrine is based on the Supremacy Clause and provides that federal law supersedes state law where Congress intended to preempt state law. *Nanopierce Techs., Inc. v. Depository Tr. & Clearing Corp.*, 123 Nev.

362, 370, 168 P.3d 73, 79 (2007). Preemption may be express or implied. This Court explained:

> . . . Congress's intent to preempt state law … may be implied in two circumstances known as field preemption and conflict preemption. First, under field preemption, preemption is implied when congressional enactments so thoroughly occupy a legislative field, or touch a field in which the federal interest is so dominant, that Congress effectively leaves no room for states to regulate conduct in that field.
>
> Second, even when Congress's enactments do not pervade a legislative field or regulate an area of uniquely federal interest, Congress's intent to preempt state law is implied to the extent that federal law actually conflicts with any state law. Conflict preemption analysis examines the federal statute as a whole to determine whether a party's compliance with both federal and state requirements is impossible or whether, in light of the federal statute's purpose and intended effects, state law poses an obstacle to the accomplishment of Congress's objectives.

Id., 123 Nev. at 371-372, 168 P.3d at 79 -80. As discussed below, state courts lack jurisdiction over conduct such as misrepresentations to federal courts—and preemption necessarily applies because the federal government must have control over enforcement of criminal conduct against it.

B. The State Cannot Target Conduct Criminalized by 28 U.S.C. § 1001.

The State focuses on allegations that Defendants violated NRS 239.330 and NRS 205.110 in Clark County because the U.S. District Court purportedly received the "forged documents" in Clark County. Regarding offering of "any false or forged instrument to be filed, registered or recorded in any public office, which instrument,

if genuine, might be filed registered or recorded in a public office under any law of this State or the United States" (NRS 239.330), the State opines that "[t]he Legislature's obvious intent is to prevent submission of false instruments to public agencies that the government or the public may need to rely upon as a genuine record" and that "the public office's receipt of the 'false or forged instrument' would be an 'effect' of the crime of the offering false instrument for filing or recording." (OB, p. 23 (citation omitted).) The public office the State incorrectly claims "received" the allegedly forged Contingent Electors' certificate is the United States District Court: "[t]he defendants 'uttered' and 'offered' their imposter documents in Clark County by mailing them to the United States District Court for the District of Nevada at its courthouse located in Las Vegas, Clark County, Nevada." (OB, p. 36 (citing 5-APP-1088–1089).) Regarding the forgery charges (NRS 205.110), the State opines that the "the Legislature's intent in making uttering a forged instrument: forgery an offense is to prevent fraud" and "[t]hat harm occurs when the victim receives and relies on false or fraudulent information." (OB, p. 22.)[1]

Nevada does not have the power to criminalize such conduct; it has "no jurisdiction to entertain an action so inseparably connected with the functioning of

[1] Thus, even if the State had produced evidence that Judge Du or the Federal District Court "received" or "relied upon" the documents—which it did not—Nevada has no jurisdiction over the alleged conduct.

the National Government." *U.S. ex rel. Noia v. Fay*, 300 F.2d at 354. It is within the federal government's exclusive purview, not Nevada's, to punish the submission of false instruments to, and frauds allegedly committed upon, federal agencies. It is already criminalized by 18 U.S.C. § 1001, a federal statute that criminalizes false statements to the judiciary (outside of parties to judicial proceedings). Indeed, case law indicates the federal government alone has the power to punish misrepresentations to the federal government.

This has been clear since 1890, when the United States Supreme Court held state courts have no jurisdiction over a complaint for perjury in a contested election case involving a seat in the Congress of the United States, even though the false swearing required under federal law was made before a state notary public. *In re Loney*, 134 U.S. 372, 374-376 (1890). The Court held the "power of punishing a witness for testifying falsely in a judicial proceeding belongs peculiarly to the government in whose tribunals that proceeding is had." *Id.* at 375. Thus, states may not impose their own punishment for perjury to federal courts. *Id.* at 375-376.[2]

[2] While *Loney* did not couch its decision in the language of preemption, the case is cited in preemption cases and the concept at issue *is* preemption, *i.e.*, whether a state court has jurisdiction where the federal government occupies a field. *Cf. Arizona v. United States*, 567 U.S. 387, 401-02 (2012) (citing *Loney* in holding field preemption applied to bar state from enforcing alien registration law).

18 U.S.C. § 1001 criminalizes false statements to any branch of the federal government outside of parties to judicial proceedings. The State lacks jurisdiction to itself criminalize such conduct. Just as the federal statute in *Loney* limited the State's ability to prosecute the conduct at issue there—a statement made in a case contesting a congressional election—18 U.S.C. § 1001 precludes the State's ability to prosecute criminal charges based on the alleged misrepresentations to the federal court at issue here. Submitting a document to the U.S. District Court (or endeavoring to) is analogous to providing testimony to a federal tribunal. Thus, Nevada cannot predicate either charge on submissions of false statements to or offering false statements to the U.S. District Court for the District of Nevada.

The *Loney* Court stressed that "[i]t is essential, to the impartial and efficient administration of justice in the tribunals of the nation, that witnesses should be able to testify freely before them, unrestrained by legislation of the state, or by fear of punishment in the state courts." 134 U.S. at 375. Indeed, the *Loney* Court noted state prosecution of alleged wrongs occurring in federal tribunals could lead to "prosecution and punishment in the courts of the State upon a charge of perjury, preferred by a disappointed suitor or contestant, or instigated by local passion or prejudice." *Id.* This would obviously impair the administration of justice in federal tribunals.

At its core, *Loney* thus concerns the ability of a federal tribunal to police conduct targeted to its own agency and the state's consequent inability to do so. More generally, states cannot use their criminal law to interfere with actions that are inseparably connected to the functioning of the national government. The State's prosecution regarding mailing the U.S. District Court interferes with the federal government's ability to police false submissions to the federal government by imposing a state sanction when a federal sanction is already in place. Just as the "power of punishing a witness for testifying falsely in a judicial proceeding belongs peculiarly to the government in whose tribunals that proceeding is had" (*Loney*, 134 U.S. at 375), submitting false documents in U.S. District Court is an offense committed directly against the United States and that is where the primary effect of the false filing lies.

While not a criminal case, in *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 350 (2001), the United States Supreme Court held that "[s]tate-law fraud-on-the-FDA claims" based on alleged misrepresentation to the Food and Drug Administration "inevitably conflict with the FDA's responsibility to police fraud" and are thus preempted.[3] The *Buckman* Court explained that it was exclusively "the

[3] The central point—that only the federal government can punish misrepresentations to the federal government—has repeatedly been applied by California courts. *See People v. Hassan*, 168 Cal. App. 4th 1306, 86 Cal. Rptr. 3d 314, 323-24 (Ct. App. 2008); *People v. Dillard*, 21 Cal. App. 5th 1205, 1214 n.5, 1226-1227 (2018).

FDA's responsibility to police fraud consistently with the Agency's judgment and objectives." *Id.* at 350. The Court also discussed the fact that FDA applicants would be discouraged from making submissions to the FDA if they feared liability in state court. Here, Defendants had every right to challenge Nevada's 2020 election results and assert their position to federal courts and other federal agencies.

C. The State Also Lacks Authority to Limit Electors from Challenging Election Results at the Federal Level.

As discussed below (III(E)), the statutes at issue are not election law statutes. But the State's claim it is endeavoring to punish the GOP electors' conduct reveals the State lacks authority here. *Under any statute,* due to the Supremacy Clause, state law cannot "limit the extent to which federal authority can be exercised." *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 395 (1971) (citing *In re Neagle*, 135 U.S. 1 (1890)). "In the absence of any constitutional delegation to the States of power… such power does not exist." *United States Term Limits v. Thornton*, 514 U.S. 779, 806 (1995).

"The States may regulate the incidents of such elections, including balloting, *only within the exclusive delegation of power [by the Constitution and Congress]*." (emphasis added). *Cook v. Gralike*, 531 U.S. 510, 523 (2001). "[T]he constitutional structure … allows the States but a limited role in federal elections, and maintains strict checks on state interference with the federal election process." *United States*

Term Limits, 514 U.S. at 802.[4] In the specific context of Presidential Electors, the Constitution and Congress have delegated power to the States in only two discrete areas: (1) the Constitution grants authority to a state legislature to set the manner of appointment of its Presidential Electors, *see* U.S. Const. Art. II, § 1; and (2) Congress, through the Electoral Count Act ("ECA") in effect in 2020, delegated to the states the limited right for its adjudicative body to resolve court disputes about Presidential Electors on or before the ECA's safe harbor date. *See* 3 U.S.C. § 5. The functioning of the United States Electoral College and its Presidential Electors is otherwise governed by the United States Constitution and the ECA; Congress has the final authority over federal elections. *Oregon v. Mitchell*, 400 U.S. 112, 125 (1970).

And one function that lies exclusively with the federal government is the final adjudication of any litigation by United States Supreme Court and the ultimate decision as to who the duly appointed electors are whose votes should be counted by Congress. "The interests of all the States … in the Federal Union demand that

[4] While the issue in *United States Term Limits* was the States' lack of authority to add qualifications for their state-elected Congressmen, the Court specifically indicated the same analysis would apply to Presidential Electors. *Id.* at 805 ("This duty [for Congress to set qualifications for members of Congress under the Elections Clause, Art. I, § 4, cl. 1] parallels the duty under Article II that "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors." Art. II, § 1, cl. 2. These Clauses are express delegations of power to the States to act with respect to federal elections.")

the ultimate tribunal to decide upon the election of President should be [Congress], in which the States in their federal relationships and the people in their sovereign capacity should be represented.") *Bush v. Gore*, 531 U.S. 98, 154 (2000) (citing 18 Cong. Rec. 30 (1886)). While "nothing forbids a party to require from candidates in its primary a pledge of political conformity with the aims of the party….Presidential electors exercise a federal function in balloting for President and Vice-President[.]" *Ray v. Blair*, 343 U.S. 214, 224–25 (1952).

While, in *Chiafalo v. Washington*, 591 U.S. 578, 586, 140 S. Ct. 2316, 2322 (2020), the United States Supreme Court upheld fines against electors who had "pledged to support Hillary Clinton in the Electoral College" and did not do so, the case was entirely unlike this case. There, "the electors decided to cast their ballots for someone else" and "hoped they could encourage other electors—particularly those from States Donald Trump had carried—to follow their example." Thus, there was no question they were violating state law governing their appointment, not preserving their right to challenge the election results; they were just "arguing that the Constitution gives members of the Electoral College the right to vote however they please." *Id.* Here, in contrast, Defendants as the duly elected GOP Electors were challenging the results of the election and considering seeking relief from the United States Supreme Court; they could not have done so without submitting a contingent elector form because, without it, any victory would have been meaningless.

Because the federal government is the ultimate arbiter, the State was without jurisdiction to punish Defendants for preserving their rights to challenge the 2020 results at the federal level.

Thus, by arguing that it is prosecuting Nevada's 2020 GOP electors' alleged election law violations, the State admits its prosecution is a politically motivated effort to fit a square peg (alleged election misconduct) into a round hole (the statutes at issue are unrelated to elections). The State also implicitly concedes it is endeavoring to regulate something it cannot: the conduct of electors and has called into question whether it has jurisdiction over any of the conduct at issue in this case.

D. Multiple Specific Preemption Theories Also Apply.

As noted (Sections III(A) and III(B)), criminal case law addressing the application of the Supremacy Clause in similar contexts uses the language of jurisdiction. However, preemption theories also apply here.

First, field preemption applies because Congress' regulation of and over the casting, collection, adjudication, and counting of presidential elector ballots and purported presidential elector ballots is comprehensive. Indeed, the ECA has been described as so "detailed" and "comprehensive" that even federal courts should be divested of jurisdiction to interfere with Congress' authority to adjudicate and count

presidential elector ballots. *Bush*, 531 U.S. at 155.[5]

Field preemption also applies because the federal interest here is so dominant—in two respects—that the exclusion of any state law must be presumed. First, "[t]he power [of Congress] to judge of the legality of the [electoral] votes is a necessary consequent of the power to count. The existence of this power is of *absolute necessity to the preservation of the Government*. The *interests of all the States in their relations to each other in the Federal Union demand that the ultimate tribunal to decide upon the election of President should be [Congress],* in which the States in their federal relationships and the people in their sovereign capacity should be represented." *Id.*, 531 U.S. at 154 (internal quotations and citations omitted) (emphasis added); *see also Burroughs,* 290 U.S. at 545 ("[P]residential electors . . . exercise federal functions under, and discharge duties in virtue of authority conferred

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[5] The legislative history of the ECA clarifies its intent to give Congress alone the power to resolve such disputes:

> The two Houses are, by the Constitution, authorized to make the count of electoral votes. They can only count legal votes, *and in doing so must determine, from the best evidence to be had, what are legal votes*....
>
> * * * * *
>
> The power to determine rests with the two houses, and *there is no other constitutional tribunal.*

531 U.S. at 154 (citations omitted, emphasis added); *see generally* Stephen A. Siegel, *The Conscientious Congressman's Guide to the Electoral Count Act of 1887*, 56 Fla. L. Rev. 541 (2004) (Siegel) (describing in detail the comprehensive provisions of the ECA, their application, and their legislative history).

by, the Constitution of the United States.)

Second, 18 U.S.C. § 1001 preempts state prosecutions for false statements to federal courts outside of parties to judicial proceedings; it states in pertinent part:

> (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
>
> …
>
> (2) makes any materially false, fictitious, or fraudulent statement or representation; or
>
> (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
>
> shall be fined under this title, imprisoned not more than 5 years …s.

The purpose is clear from the language of the statute but can be further described as follows:

> Federal courts, Congress, and federal agencies rely upon truthful information in order to make informed decisions. Federal law therefore proscribes providing the federal courts, Congress, or federal agencies with false information.[6]

Further, "[i]t is clear that the congressional intent in using the broad language found in 18 U.S.C. § 1001 (formerly 18 U.S.C. § 80) was to protect the authorized functions of governmental departments and agencies from the perversions which might result

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[6] Congressional Research Service, "False Statements and Perjury: An Overview of Federal Criminal Law," updated October 8, 2024, available at: https://crsreports.congress.gov/product/pdf/RL/98-808#:~:text=Federal%20courts%2C%20Congress%2C%20and%20federal,oath%20in%20federal%20official%20proceedings. (Last checked 10/24/24).

from the deceptive practices proscribed." *Pitts v. United States*, 263 F.2d 353, 358 (9th Cir. 1959).

"[U]nder field preemption, preemption is implied when congressional enactments so thoroughly occupy a legislative field, or touch a field in which the federal interest is so dominant, that Congress effectively leaves no room for states to regulate conduct in that field." *Nanopierce Techs*, 123 Nev. at 371, 168 P.3d at 79. As the *Loney* court essentially found in the sister context of federal judicial proceedings, policing misrepresentations to federal courts is so exclusively occupied by federal courts, state courts have no authority to do so. 134 U.S. at 375-376. Even if the federal courts did not thoroughly occupy the field, the field is also one in which the federal interest is so dominant, that the there is likewise no room for the states to regulate it. And the same is true about Congress's exclusive authority over electors and counting of the votes.

Even if field preemption did not apply, obstacle or conflict preemption would because "in light of the federal statute's purpose and intended effects, state law poses an obstacle to the accomplishment of Congress's objectives." *Nanopierce Techs*, 123 Nev. at 366, 168 P.3d at 76. *See also Arizona v. United States*, 567 U.S. 387, 399-400 (2012) (describing conflict preemption). Persons should not be deterred from making submissions to federal agencies challenging the results of elections because of the risk of state enforcement; state courts should not set the parameters of

submissions to federal agencies. *See also Loney*, 134 U.S. at 376, (states cannot use state criminal laws to interfere with federal government's adjudication of a dispute over who was the correct Congressman to be seated because that function is so inseparably connected to the functioning of the national government).

E. The Presumption Against Preemption Does Not Apply.

The inquiry as to whether the presumption against preemption applies is "whether the state regulation occurs 'in a field which the States have traditionally occupied.'" *Dillard,* 21 Cal. App. 5th at 1221 (quoting *Buckman Co. v. Plaintiffs' Legal Comm*., 531 U.S. 341, 347 (2001)). The "analysis hinges on [] the area of regulation: is it the prosecution of theft and criminal fraud, which lies within the states' historic police powers, or is it '[p]olicing fraud against federal agencies … [,] hardly 'a field which the States have traditionally occupied.'" *Id.*

While the State's entire case depends on distracting this Court with casting the crimes at issue as election law crimes, NSR 205.110 (general criminal statute for uttering forged instruments) and NRS 239.330 (general criminal statute for offering false instrument for filing or record) are not election law crimes. The crimes at issue do not fall within Chapters 293 or 298.

Indeed, **as late as 2023**, the Attorney General admitted that there was no law making the conduct at issue here illegal and that Nevada election law does not criminalize Defendants' conduct. *See* Assembly Committee on Legislative

Operations and Elections Minutes: Hearing on S.B. 133 Before the Assembly Committee on Legislative Operations and Elections, 2023 82nd Sess. May 11, 2023 (statement of Attorney General Aaron Ford, at pp. 18-19 and Exhibit F ("With this bill, Nevada law would make it clear that those involved in schemes such as those undertaken by Nevada's state electors can be held accountable. It spells out neatly in section 1, subsection 8, what it means to create, conspire or create, to serve as a fake slate of electors, and to present such a slate.")[7] Even if it did, the State lacks authority to regulate conduct such as submission of contingent ballots and cannot interfere with the federal government's role as final arbiter (or the right of defendants to petition the government).

The fact that the crimes are not election law crimes, and the election law statutes do not criminalize them thwarts any claim the charges are not preempted and instead just calls into question the legitimacy of the case because Nevada cannot interfere with exclusively federal powers. Even if Nevada election law did and could apply, regulation of misrepresentations to, and frauds upon, federal courts are not—and definitionally cannot—be "quintessentially a matter of long-standing local concern." *Dillard*, 21 Cal. App. 5th at 1222. The relationship between electors and

[7] Available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.leg.state.nv.us/Session/82nd2023/Minutes/Assembly/LOE/Final/1112.pdf (last checked October 24, 2024).

the federal government originates from, is governed by, and terminates according to federal law. *Id.*

F. Lack of Jurisdiction Is Not Waived.

Defendants recognize that they did not raise the issues herein below and, generally, parties cannot raise issues for the first time on appeal. *See, e.g., State v. Wade,* 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989). However, lack of subject matter jurisdiction is not waived.

The Nevada Court of Appeals held that, even in the civil context, the type of federal preemption at issue here is a question of subject matter jurisdiction which can be raised on appeal. *Highroller Transp., LLC v. Nev. Transp. Auth*., 541 P.3d 793, 2023 Nev. App. LEXIS 9, *18 (Nev. 2023) ("[W]e recognize that a party may raise subject matter jurisdiction at any time.") (citations omitted). "When federal preemption implicates the choice of law governing an action, it operates as an affirmative defense that may be waived." *Id.* at *19 (citation omitted). "However, a more limited subset of nonwaivable, jurisdictional federal preemption exists when the preemptive federal legislation vests subject matter jurisdiction 'exclusively in one forum' and, in doing so, withdraws jurisdiction from all other forums." *Id.* (citing and quoting from *Davis*, 476 U.S. at 393 nn.9 & 11).

As *Loney* made clear, where enforcement of state law interferes with the federal courts' ability to police crimes against the United States, a subject matter

jurisdiction issue necessarily arises:

> A witness who gives his testimony, pursuant to the Constitution and laws of the United States, in a case pending in a court or other judicial tribunal of the United States, whether he testifies in the presence of that tribunal, or before any magistrate or officer (either of the nation or of the State) designated by act Congress for the purpose, is accountable for the truth of his testimony to the United States only; and perjury committed in so testifying is an offence against the public justice of the United States and within the **exclusive jurisdiction** of the courts of the United States; and cannot, therefore, be punished in the courts of Virginia …

Loney, 134 U.S. at 375-376 (emphasis added). Just like statements to federal tribunals, forgery upon and false submissions to federal courts and other federal agencies are "offence[s] against the public justice of the United States and within the exclusive jurisdiction of the courts of the United States." *Id.*

A challenge to the Court's subject matter jurisdiction may be brought at any time and in almost any manner. *Meinhold v. Clark Cnty. Sch. Dist.*, 89 Nev. 56, 59, 506 P.2d 420, 422 (1973); *Stock Growers' & Ranchers' Bank v. Milisich*, 48 Nev. 373, 390, 233 P. 41, 46 (1925); *see also Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011). Subject matter jurisdiction can never be waived by a litigant. *Mainor v. Nault*, 120 Nev. 750, 761 n.9, 101 P.3d 308, 315 n.9 (2005) (citing *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990)).

III. CONCLUSION

Nevada does not have jurisdiction over the Defendants' alleged crimes to the extent they rely on alleged conduct that is criminalized under 18 U.S.C. § 1001 or

conduct that Congress has exclusive authority over. At the very least, venue in Clark County cannot be predicated on any purported conduct directed to the U.S. District Court of Nevada or then-Chief Judge Miranda Du and this Court should disregard arguments in favor of venue that rely on those allegations.

DATED this 28th day of October, 2024.

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CERTIFICATE OF COMPLIANCE

Pursuant to NRAP 32(a)(9)(A):

I hereby certify that this motion complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because the MOTION TO DISMISS has been prepared in a proportionally spaced typeface (14-point Times New Roman font).

I further certify that this MOTION TO DISMISS complies with the type-volume limitation of NRAP 27(d)(2)(A) because it contains 4,569 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 28th day of October, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONDENTS' MOTION TO DISMISS APPEAL was filed electronically with the Nevada Supreme Court on the 28th day of October, 2024. Electronic service of the foregoing document shall be made in accordance with the Master Service List.

/s/ Alexander Loglia
Employee of McLetchie Law